

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-1471**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On October 25, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, not for misconduct (decision # 154258). The employer filed a timely request for hearing. On December 12, 2017, ALJ Janzen conducted a hearing, and on December 13, 2017 issued Hearing Decision 17-UI-98881, affirming the Department's decision. On December 22, 2017, the employer filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Peacehealth employed claimant as a "lab assistant technical" from May 29, 2013 to October 5, 2017.

(2) The employer had a patient record confidentiality policy that permitted caregivers to access a patient's personal health information only on a "need to" basis. Transcript at 6. Claimant received training regarding the policy at hire. Although most employees received annual updates regarding the policy, claimant did not receive annual updates during 2016 and 2017 because the laboratory did not have a manager during the last two years of claimant's employment. Claimant understood that she was to use "good stewardship" and limit her access to patient records to the minimum necessary information required to effectively perform [her] work related responsibilities." Transcript at 19.

(3) In August 2017, a patient the employer considered high profile received care in the employer's emergency room in the facility where claimant worked. During claimant's graveyard shift in the laboratory on August 16 and 17, claimant was the only employee on duty in the laboratory. A nurse from the emergency room contacted the laboratory with questions about the patient and the patient's medical sample. Claimant looked at the patient's "nursing notes" for information to answer the care provider's questions. Transcript at 14. Claimant was not able to obtain the information needed by looking at only the patient's lab order. Claimant regularly consulted patients' nursing notes to answer questions from the emergency room. Claimant had not been instructed that doing so might violate the employer's patient record confidentiality policy.

(4) In September 2017, the employer's random audit of caregivers who accessed the high profile patient's file during the patient's treatment in August 2017 showed that claimant accessed the file during her shift overnight on August 16 and 17. The employer investigated the reason claimant accessed the file and determined that claimant should have obtained the information from a nurse or doctor caring for the patient instead of from the patient's medical file, and that by accessing the medical file, claimant was practicing outside the scope of her duties as a lab assistant technical. The employer removed claimant's access to the employer's electronic medical records.

(5) Prior to September 21, 2017, claimant had not been issued any corrective actions.

(6) On October 5, 2017, the employer discharged claimant for violating the employer's patient record confidentiality policy.

**CONCLUSIONS AND REASONS:** We agree with the Department and the ALJ and conclude the employer discharged claimant not for misconduct.

ORS 657.176(2)(a) requires a disqualification from unemployment insurance benefits if the employer discharged claimant for misconduct connected with work. OAR 471-030-0038(3)(a) (August 3, 2011) defines misconduct, in relevant part, as a willful or wantonly negligent violation of the standards of behavior which an employer has the right to expect of an employee, or an act or series of actions that amount to a willful or wantonly negligent disregard of an employer's interest. OAR 471-030-0038(1)(c) defines wanton negligence, in relevant part, as indifference to the consequences of an act or series of actions, or a failure to act or a series of failures to act, where the individual acting or failing to act is conscious of his or her conduct and knew or should have known that his or her conduct would probably result in a violation of the standards of behavior which an employer has the right to expect of an employee. Good faith errors are not misconduct. OAR 471-030-0038(3)(b).

It is undisputed that claimant accessed the nursing notes in the high profile patient's medical records. In doing so, claimant violated the employer's patient record confidentiality expectations because the employer expected claimant to obtain the information claimant sought by asking a nurse or doctor treating the patient, and not by accessing the patient's nursing notes.

The record shows claimant accessed the records to answer questions from a care provider in the emergency room who had called the laboratory. Although the employer expected claimant to find a nurse or doctor elsewhere in the facility or tell the care provider how to find the answers in the medical records on his or her own, we find claimant's explanation persuasive that she believed in good faith that she was unable to leave the laboratory where she was working alone to find a nurse or doctor who treated the patient, and that it was inappropriate to tell the emergency room to "go find [the answer] yourself." *See* Transcript at 17, 23-24. Claimant's testimony about her purpose in accessing the record was not rebutted, and the evidence at hearing was insufficient to show that claimant knew or should have known she was accessing the records for a purpose that did not relate to her duties as a lab assistant technical. Claimant believed she had accessed information necessary to perform her duties and had done the same in the past without repercussions. Thus, the preponderance of the evidence shows claimant's actions were not due to a conscious decision not to follow the employer's policy, but were, rather, the result of a good faith error on claimant's part. Good faith errors are not misconduct. OAR 471-030-0038(3)(b).

The employer discharged claimant for a good faith error, which is not misconduct. Therefore, claimant is not disqualified from receiving unemployment insurance benefits because of this work separation.

**DECISION:** Hearing Decision 17-UI-98881 is affirmed.

J. S. Cromwell and S. Alba;  
D. P. Hettle, not participating.

**DATE of Service: January 26, 2018**

**NOTE:** You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals within 30 days of the date of service listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310 or visit the Court of Appeals website at [courts.oregon.gov](http://courts.oregon.gov). Once on the website, use the ‘search’ function to search for ‘petition for judicial review employment appeals board’. A link to the forms and information will be among the search results.

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